IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.100 of 1989
Date of decision : 15.11.2006

The Jalandhar Improvement Trust, Jalandhar

....Appellant

Versus

Phaggu Ram (dead) through L.R.

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.S.C.Pathela, Advocate
for the appellant.

Ms.Puneeta Sethi, Advocate
for the respondent.

...

MAHESH GROVER, J.(Oral)

The present Regular Second Appeal has been preferred by the Jalandhar Improvement Trust against the judgments dated 29.11.1986 passed by the learned Sub Judge Ist Class, Jalandhar and 3.6.1988 passed by the learned Addl.District Judge, Jalandhar.

Briefly stated, the facts of the case are that the respondent Phaggu Ram filed a suit against the appellant for mandatory injunction seeking a direction to the effect that the appellant be directed to allot a plot of 1 kanal in J.P.Nagar Scheme in lieu of the land which was acquired by the appellant pursuant to a scheme which was published on 3.9.1974 under the provisions of Section 36 of the Punjab Town Improvement Act, 1922 and rules framed thereunder. The plaintiff-respondent, inter-alia, pleaded that

he was owner of land measuring 8 kanals 11 marlas which he had purchased vide sale deed dated 30.6.1968 registered on 1.7.1968. The said land was acquired for the purpose of Development Scheme of 74.3 and 33.0 Acres and, therefore, he was entitled to a plot on preferential basis as he came within the definition of "local displaced person". It was pleaded that similar plots had been allotted to various persons for residential purposes and since the plaintiff-respondent's case was similar, he pleaded parity with those allottees.

The suit was resisted by the appellant. The factum of acquisition was admitted but the entitlement of the claim of the respondent was denied and the only ground on which the plot was not allotted to the respondent was that even though the notification had been published on 3.9.1974 and the award in pursuance to the acquisition was announced on 21.12.1978, the respondent slept over the matter and has filed the suit now in 1986 at a belated stage.

On the pleadings of the parties, the following issues were framed :-

1. Whether plaintiff is entitled to a plot of one kanal in J.P.Nagar in lieu of the acquired land of the plaintiff ? OPP
2. Whether the plaintiff is entitled to the injunction prayed for ? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPP
4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is bared by time? OPD
6. Whether the suit is estopped by his own acts and conducts? OPD
7. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
8. Relief.

After appraisal of the evidence adduced by both the parties the learned trial court vide its judgment dated 29.11.1986 directed that a plot of dimension of one kanal be allotted to the respondent. Aggrieved by the findings of the learned trial court the appellant preferred an appeal before the learned Addl.District Judge, Jalandhar who affirmed the findings of the learned trial court vide its judgment dated 3.6.1988.

This has necessitated the second appeal by the appellant.

The sole contention that has been raised by the learned counsel for the appellant while placing reliance on a judgment of the apex court reported as **Jalandhar Improvement Trust v. Sampuran Singh** 1999(1) PLJ 340 is to say that under the definition of Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 (hereinafter referred to '1975 Rules') the respondent is not entitled to be allotted a plot for the reason that at the time when the acquisition was made, the Jalandhar Improvement Land Disposal Rules, 1954 (in short '1954 Rules') framed under the Act, were in existence, and as per the definition of the “local displaced person” the respondent was not eligible. The subsequent Rules of 1975 and 1983 amended the definition of the “local displaced person”. Since the

notification had been issued in the year 1974, therefore, the provisions of the Rules were not attracted thereby dsentitling the respondent from his claim.

The argument of the learned counsel for the appellant was vehemently opposed by the learned counsel for the respondent who contended that the respondent was a “local displaced person” within the meaning of the Act and the Rules and was entitled to the plot as claimed by him.

I have heard the learned counsel for the parties and have perused the record.

On 5.1.1954, 1954 Rules were notified and Rule 2(b) defined the “local displaced person” as a person whose property had been acquired by the Trust for the execution of a scheme under the Punjab Development of Damaged Areas Act, 1951. Subsequently, on 18.9.1975 the State Government promulgated rules titled as “Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975. Rule 2(a) of these rules went on to define the “local displaced person” as follows:

> “ 'Local displaced person' means a person who is the owner of a property acquired by the Trust for the execution of a scheme and has been such owner for a continuous period of two years immediately before the first publication of the scheme by the Trust under Section 36 of the Punjab Town Improvement Act, 1922;”

In 1983, another set of rules was promulgated known as the Punjab Town Improvement (Utilisation of Land and Allotment of

Plots) Rules, 1983 which defined the "local displaced person" as below:-

> " 'Local displaced person' means a person who is the owner of any land acquired by the Trust for the execution of any scheme under the Act and who has been such owner for a continuous period of two years, immediately before the first publication of such scheme by the Trust under Section 36."

The relevant date for determining the status of the respondent as a local displaced person to be eligible under the rules would therefore be the date of publication of the notification under Section 36 of the Act which is 3.9.1974 and the factum of his being the owner of the property subjected to acquisition two years prior to the issuance of the aforesaid notification.

Concededly, if the 1975 Rules were to be made applicable, the respondent would undeniably be eligible to be a local displaced person and, therefore, entitled to a preferential allotment. But as the facts reveal, 1975 Rules are not attracted for the simple reason that the notification was issued in the year 1974 before the coming into force of the 1975 Rules. At the time of issuance of notification, 1954 Rules (5.1.1954) were holding the field and according to which the respondent did not qualify for the preferential allotment. The judgment of the apex court in **Jalandhar Improvement Trust v. Sampuran Singh (supra)** is, therefore, fully attracted to the facts of the present case. Learned counsel for the respondent has been unable to distinguish the judgment either in facts

or in law.

The questions of law that would arise in the present appeal would be : (1) whether the plaintiff-respondent could be held eligible for preferential allotment being a local displaced person within the meaning of Rule 2(a) of 1975 Rules; (2) whether the provisions of the 1975 Rules would be attracted to the acquisition which took place pursuant to notification dated 3.9.1974, prior to the coming into existence of the said rules.

The questions of law stand answered in view of the discussion aforesaid and especially in view of the judgment of the apex court referred to above.

The present appeal is, therefore, allowed and the judgments of the courts below are set aside and it is held that as the 1975 Rules are not attracted, hence the plaintiff-respondent is not a local displaced person within the meaning of the aforesaid rules and is not entitled to preferential allotment.

15.11.2006 (MAHESH GROVER)
JUDGE

dss